

## **EXHIBIT E**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 STEVEN NOVICK,

4 Plaintiff,

5 v.

07 CV 7767 (AKH)

6 AXA NETWORK, LLC, et al,

7 Defendants.

8 -----x  
9 New York, N.Y.  
10 November 7, 2011  
11 11:15 a.m.

12 Before:

13 HON. ALVIN K. HELLERSTEIN,

14 APPEARANCES  
15 FINKELSTEIN & FEIL  
16 Attorneys for Plaintiff  
17 MICHAEL FINKELSTEIN  
18 CRAIG RIHA

19 EPSTEIN BECKER & GREEN, P.C.  
20 Attorneys for Defendant  
21 AIME DEMPSEY  
22 MICHAEL KALISH

1B7FNOVC

1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: Steven S. Novick v. AXA Network,  
4 LLC. Counsel, state your names for the record.5 MR. FINKELSTEIN: For the plaintiff, Steven Novick,  
6 Michael Finkelstein of Finkelstein and Feil. Mr. Novick.

7 THE COURT: You're missing a tie, Mr. Novick.

8 MR. NOVICK: I'm sorry?

9 THE COURT: A tie in court.

10 MR. NOVICK: I apologize.

11 MR. RIHA: Craig Riha with Finkelstein and Feil.

12 MS. DEMPSEY: Amy Dempsey with Epstein, Becker & Green  
13 with Michael Kalish for defendants.14 THE COURT: Very good. Be seated. Ms. Dempsey, why  
15 did you make a 12(b)(6) motion and not a 56 motion?16 MS. DEMPSEY: The 12(b)(6) was because we were making  
17 a renewed motion to dismiss from the Court's prior order.

18 THE COURT: What makes you think I'd change my mind?

19 MS. DEMPSEY: Pardon me?

20 THE COURT: What makes you think I'd change my mind?

21 MS. DEMPSEY: I don't know what you would have changed  
22 your mind from.

23 THE COURT: I dismissed your motion earlier, didn't I?

24 MS. DEMPSEY: Not that I'm aware of.

25 THE COURT: Didn't I? You said a renewed motion.

1B7FNOVC

1 MS. DEMPSEY: Yes, we made a motion at the end of 2009  
2 to dismiss the entire second amended complaint. The Court  
3 granted most of that motion at the end of January of this year  
4 and gave us leave to renew that motion.

5 THE COURT: Why didn't you finish discovery before you  
6 made the motion and make a Rule 46 motion?

7 MS. DEMPSEY: Because the Court ordered we would do  
8 limited discovery and then we would have the opportunity to  
9 renew the motion. A schedule was set for that, which we  
10 complied with and it got stretched out some when plaintiff  
11 requested more time for their opposition.

12 THE COURT: Plaintiff alleges that the compliance  
13 manual having been referred to by the contract affects that  
14 contract to some degree. To what degree is something I can't  
15 decide on motion.

16 MS. DEMPSEY: I don't think that's so, your Honor.

17 THE COURT: Tell me why not.

18 MS. DEMPSEY: The compliance manual in and of itself  
19 states that it's not a contract, and nothing in the contract,  
20 either of the two contracts applicable here, the agent's  
21 agreement or the --

22 THE COURT: So what purpose does it serve if it's not  
23 a contract, if it's not binding in some fashion? What is it  
24 that you're telling me? It actually takes a large manual,  
25 takes hours and hours of time to prepare it, gives it to all

1B7FNOVC

1 the employees and then they decide each time whether they will  
2 follow it or not? Is that what you're telling me?

3 MS. DEMPSEY: With respect to the particular things at  
4 issue here, the referral to the NDAC and the MDAC, they're  
5 guidelines.

6 THE COURT: The reporter won't know what that is.  
7 Neither will I.

8 MS. DEMPSEY: National disciplinary action committee  
9 and management disciplinary action committee. The guidelines  
10 are stated in the compliance manual. It is the party's  
11 position, it is defendant's position that the guidelines stated  
12 in the compliance manual were followed. It's not a situation  
13 where AXA in this case --

14 THE COURT: So if they were followed, then it means  
15 there has to be a full discovery whether they were followed or  
16 not. The discovery didn't get into that.

17 MS. DEMPSEY: That's correct -- it did to some extent,  
18 first of all, it did, and --

19 THE COURT: But the parties are not finished.

20 MS. DEMPSEY: The parties took the limited discovery  
21 that the Court ordered to renew its motion and plaintiffs took  
22 the depositions of three of the AXA management that he  
23 selected, and he still cannot show that the guidelines were not  
24 followed.

25 THE COURT: But if you show that they were --

1B7FNOVC

1 MS. DEMPSEY: The violation was referred -- I'm sorry,  
2 your Honor.

3 THE COURT: Have you shown that they were followed?

4 MS. DEMPSEY: Have we showed that they were followed?

5 THE COURT: Yes.

6 MS. DEMPSEY: I think we have, your Honor. The  
7 violation was referred to the --

8 THE COURT: So why didn't you make a Rule 56 motion?

9 MS. DEMPSEY: Because I don't think we need to show  
10 that they were followed in order to get a motion to dismiss  
11 granted on breach of contract. There's no breach of contract  
12 here. That's the remaining claim.

13 THE COURT: Novick claims that we had a compliance  
14 manual that had to be followed. He's got some rights in the  
15 process. I understand that you're saying that it doesn't form  
16 a contract, but on the other hand it's not completely  
17 discretionary either. Otherwise it's not a compliance manual.  
18 So I don't know how to deal with this on a 12(b)(6) motion.

19 MS. DEMPSEY: We also move in the alternative to Rule  
20 56 pursuant to our motion again --

21 THE COURT: There hasn't been enough discovery.

22 MS. DEMPSEY: I respectfully disagree, your Honor, I  
23 think there's been a fair amount of discovery.

24 THE COURT: Fair amount yes, but not complete.

25 MS. DEMPSEY: That plaintiff has not been able to show

1B7FNOVC

1 and cannot show and will not be able to show that anything  
2 related to his termination constitutes a breach of either of  
3 his contracts.

4 THE COURT: I suspect they will not be able to show  
5 it, but up to now I don't think he has been given enough chance  
6 because of the limited nature of the issues to show it or not  
7 and I think having been once reversed by the Court of Appeals  
8 I'll be reversed a second time. I'll do you no favor, I'll do  
9 him no favor, I'll do myself no favor. I think this procedural  
10 posture does not suit well to what we're doing now and I went  
11 along with your suggestion that I'm at fault. I don't think it  
12 was wise to limit the discovery. The case is now four years  
13 old and still hanging around and I think I can't dispose of it  
14 now.

15 I don't believe that Mr. Novick is going to be able to  
16 show that he was damaged in any respect under the contract.  
17 I'm not even sure he can show that there was a breach of  
18 contract, but he has more of a chance than we've given him to  
19 try that if he wants to.

20 MS. DEMPSEY: I hear what you're saying, your Honor,  
21 but he still has had numerous opportunities including this  
22 being his second amended complaint to even plead a breach of  
23 contract under Twombly and Iqbal --

24 THE COURT: I cut him out of his original theories, so  
25 he's trying to stay in with contract plus. But all he has is

1B7FNOVC

1 breach of practice.

2 MS. DEMPSEY: I understand, and I think contract plus  
3 doesn't get him to survive a motion to dismiss either.

4 THE COURT: That may be, but it will not be a motion  
5 to dismiss. It will be a motion for summary judgment that his  
6 breach which really was in your opinion a breach by being  
7 disloyal by doing contract investments elsewhere, that was an  
8 act of disloyalty which entitles him to be terminated.

9 MS. DEMPSEY: Right.

10 THE COURT: But the trouble with a motion to dismiss,  
11 it requires me as a matter of law to rule that there was no  
12 effect to the compliance manual if the company chose to  
13 disregard it. I can't do that. That would not really be right  
14 from AXA's point of view or the case point of view. Clearly it  
15 doesn't state a contract, but it does in a sense that it  
16 changes an employment at will to something else, but clearly  
17 also it does restrict AXA in some respect, and it's not good on  
18 a Rule 12 motion to try to figure out just how the restriction  
19 will work.

20 MS. DEMPSEY: Two things. One is Mr. Novick was not  
21 an employee of either AXA entity. His only relationship was an  
22 affiliated relationship through the two contracts.

23 THE COURT: But didn't the compliance manual apply to  
24 him also?

25 MS. DEMPSEY: It did.

1B7FNOVC

1 THE COURT: So it's the same point.

2 MS. DEMPSEY: And second, I think since defendants  
3 have moved in the alternative for summary judgment, I do  
4 respectfully submit that the discovery on the issue of whether  
5 his termination was properly conducted under the compliance  
6 manual was sufficiently dealt with in the limited discovery.

7 THE COURT: Remind me now what did he do, what  
8 compliance was had and what was not had?

9 MS. DEMPSEY: What he did do was he sold away which is  
10 an industry term for offering securities that are not approved  
11 by the firm, so he offered, he sent well over 30 e-mails to  
12 clients, friends, prospective clients, past clients over a  
13 period of about two weeks, the 27th of September to the 6th of  
14 October.

15 THE COURT: And what was he offering?

16 MS. DEMPSEY: Regarding, he was offering to talk about  
17 and to put forth a buying interest in a company called Nau, I  
18 think it's pronounced, N-A-U and was clearly in the e-mail  
19 soliciting interest in that company. He with respect to the --  
20 principals of the companies --

21 THE COURT: And what was the rule in effect?

22 MS. DEMPSEY: What was the rule in effect?

23 THE COURT: What was AXA's ruling? That he could only  
24 solicit sales to approved companies?

25 MS. DEMPSEY: Right. He could only solicit -- whether

1 or not he earned any income from such solicitation, whether or  
2 not such solicitation came to fruition, he was not entitled to  
3 solicit interest in securities that were not approved by AXA.

4 THE COURT: And that was a very important policy  
5 because AXA was potentially liable for suitability issues and  
6 if a salesman was offering securities in a non-approved entity,  
7 the company was potentially liable should anything bad happen  
8 to those investments.

9 MS. DEMPSEY: Absolutely, your Honor.

10 THE COURT: So the solicitation would involve the  
11 company in something that was potentially illegal.

12 MS. DEMPSEY: That's correct.

13 THE COURT: And so you limit your salesmen to solicit  
14 interest only in companies that are approved by your research  
15 department.

16 MS. DEMPSEY: But AXA Advisers in this case, the  
17 securities company has to have knowledge and understanding of  
18 what securities are being offered under its name.

19 THE COURT: So this was a clearly material issue?

20 MS. DEMPSEY: Absolutely. And indeed --

21 THE COURT: And what did you do when you found out  
22 about it?

23 MS. DEMPSEY: We asked him for his version of events.  
24 We went to -- had meetings --

25 THE COURT: What did he tell you?

1B7FNOVC

1 MS. DEMPSEY: He denied selling away.

2 THE COURT: Now, has this been explored?

3 MS. DEMPSEY: But admitted sending the e-mails that  
4 were sent, indicated that he meant no harm and tried to get  
5 approval of the securities thereafter.

6 THE COURT: And failed or succeeded?

7 MS. DEMPSEY: He did, he did receive approval after  
8 the fact. But he had -- first of all, there's no dispute that  
9 he did in fact sell away. FINRA found that he did when they  
10 did their investigation --

11 THE COURT: Yes, but you eventually approved those  
12 companies as suitable investments.

13 MS. DEMPSEY: Nothing happened with it after his  
14 termination.

15 THE COURT: Has this been explored in depositions?

16 MS. DEMPSEY: Has which part been explored in  
17 depositions?

18 THE COURT: What we're talking about now.

19 MS. DEMPSEY: Certainly what happened at the time  
20 around, the time of his termination has been explored in  
21 depositions, yes.

22 THE COURT: And so what happened after that?

23 MS. DEMPSEY: AXA executives met and discussed the  
24 situation, including a meeting that he participated in, and he  
25 was then terminated from his two contracts affiliating him with

1 AXA Advisers and AXA Network.

2 THE COURT: By notice?

3 MS. DEMPSEY: Pardon?

4 THE COURT: By notice. He was told what, you're  
5 fired, in effect?

6 MS. DEMPSEY: He was told that his contract would be  
7 terminated, yes.

8 THE COURT: So in effect he was fired.

9 MS. DEMPSEY: Well, he was never an employee, but yes.  
10 I mean, he was never an employee to be fired. He had an  
11 affiliated independent contract relationship.

12 THE COURT: So that was terminated. His relationship  
13 is terminated.

14 MS. DEMPSEY: His relationship was terminated.

15 THE COURT: Then what was the next step under the  
16 compliance manual?

17 MS. DEMPSEY: He could have appealed.

18 THE COURT: Did he?

19 MS. DEMPSEY: No.

20 THE COURT: He contends you have to go through some  
21 kind of procedure before you terminate the relationship, is  
22 that right?

23 MS. DEMPSEY: No, that's not correct.

24 THE COURT: What's his allegation?

25 MS. DEMPSEY: I'm sorry?

1B7FNOVC

1 THE COURT: What is his allegation?

2 MS. DEMPSEY: I believe his allegation, if I  
3 understand it correctly, was we were required to go to the MDAC  
4 and the NDAC, the national disciplinary action committee and/or  
5 the management disciplinary action committee.

6 THE COURT: Either one?

7 MS. DEMPSEY: He doesn't specify which would have been  
8 the correct one or what would have come out of it or how  
9 anything would have been different.

10 THE COURT: If the compliance manual were in effect  
11 and binding, what would you have had to do?

12 MS. DEMPSEY: We would have had to do what we did. We  
13 referred the matter to the national compliance office, which  
14 then determines whether or not it's an appropriate matter for  
15 the NDAC or the MDAC. In this case they did not forward it to  
16 the NDAC or MDAC, but --

17 THE COURT: What did they do?

18 MS. DEMPSEY: They discussed it on a national level in  
19 New York.

20 THE COURT: And did they resolve the matter?

21 MS. DEMPSEY: They did. They terminated him.

22 THE COURT: So in effect ratified the termination.

23 MS. DEMPSEY: They decided on the termination.

24 THE COURT: Is there an appeal from that?

25 MS. DEMPSEY: He could have appealed.

1B7FNOVC

1 THE COURT: To where?

2 MS. DEMPSEY: To the NDAC or the MDAC.

3 THE COURT: So it was his option. Did he?

4 MS. DEMPSEY: No.

5 THE COURT: So that's why you argue that all  
6 procedures under the compliance manual were satisfied.

7 MS. DEMPSEY: That's correct.

8 THE COURT: And is that part of this motion?

9 MS. DEMPSEY: Yes.

10 THE COURT: So let me hear now from the plaintiff, Mr.  
11 Finkelstein.

12 MR. FINKELSTEIN: Thank you, your Honor. Your Honor,  
13 I think you stated it correctly from the beginning. This was  
14 never a motion to dismiss, this was a motion for summary  
15 judgment. If we look back --

16 THE COURT: Yes, but if we have everything on the  
17 table, I have the right, since both sides have put in  
18 affidavits -- am I right, both sides put in affidavits?

19 MR. FINKELSTEIN: Yes, both sides put in papers, yes.

20 THE COURT: I have the right to treat it as a Rule 56  
21 motion.

22 MR. FINKELSTEIN: You could, your Honor, and I think  
23 that's the way they crafted it. But the problem here is if we  
24 look back from the very beginning, there are clearly questions  
25 of fact from the inception. Our contention is that he was

1B7FNOVC

1 fired for whistle blowing. Their contention was he was fired  
2 for selling away. It's a question of fact.

3 THE COURT: But if they have a complete right to fire  
4 him for selling away, what difference does it make that there  
5 might also have been in your eyes a retaliation?

6 MR. FINKELSTEIN: That's correct, Judge, it's our  
7 contention there was a retaliation.

8 THE COURT: Let's say you were right. But if they  
9 also had a right to terminate him for something that he did  
10 that was violative of his relationship, you have no damage.

11 MR. FINKELSTEIN: I don't agree, your Honor. We're  
12 clearly damaged. Because not only was there, the second  
13 component to this which I was going to get to which deals with  
14 the monies that he was lent and why he came over and his book  
15 of business and everything else, which now they claim he owes  
16 them close to a million dollars on, so he was clearly damaged  
17 because they wrongfully terminated him and now want him to pay  
18 it back, so he's clearly damaged. On top of that, they also  
19 took his book of business, improperly, which is also a question  
20 of fact. They say he didn't, we say he did. Also talking  
21 about the termination and his appeal and procedures, we've had  
22 limited depositions but meanwhile no one has told us what  
23 occurred during these procedures. What happened at this  
24 alleged personal meeting in New York City? What happened  
25 thereafter?

1B7FNOVC

1               Oh, by the way, your Honor, just to be clear about  
2 this appeal process, Mr. Novick couldn't appeal because he got  
3 terminated on the 12th. They dropped his U5 license on the  
4 13th. If you look at his U5, it clearly indicates, was he  
5 under the -- I just want to quote this properly. Question 7B.  
6 Indicated. Currently is or at the termination was the  
7 individual under internal review for fraud or wrongful taking  
8 of property or violating investment-related statutes,  
9 regulations, rules of industry standard or conduct. The answer  
10 was no.

11               How could they in one breath accuse him of selling  
12 away, which is clearly a violation of those, and the next day  
13 taking his license away and saying he wasn't under review for  
14 that. He couldn't appeal. There was nothing to appeal from,  
15 they already took his license away.

16               THE COURT: Let me take it step by step. First you  
17 say that you don't know what happened at the national  
18 disciplinary level.

19               MR. FINKELSTEIN: That's correct, Judge.

20               THE COURT: Ms. Dempsey, was the national disciplinary  
21 action recorded in some fashion?

22               MS. DEMPSEY: Not that I'm aware of, no.

23               THE COURT: Did it end up with some kind of result  
24 that was in writing?

25               MS. DEMPSEY: It wasn't strictly a national

1B7FNOVC

1 disciplinary action review. It was on a national level, his  
2 termination was decided on as opposed to just the local level  
3 in Connecticut. Both local and national were involved.

4 THE COURT: So Mr. Finkelstein's comment was there  
5 really wasn't a pursuit of the procedure as set out in the  
6 manual. He's right, then.

7 MS. DEMPSEY: No, he's not, because the national  
8 disciplinary action is not required in the manual. The  
9 reference to the national compliance office was required and  
10 did happen.

11 THE COURT: All right. I asked you before if the  
12 compliance manual were in effect, what did you have to do.

13 MS. DEMPSEY: What did we have to do?

14 THE COURT: What did you have to do.

15 MS. DEMPSEY: We had to refer to the national  
16 compliance office and that we did.

17 THE COURT: And what did they do, the national  
18 compliance office?

19 MS. DEMPSEY: They convened executives at both the  
20 national and the local level to discuss the situation and  
21 determine whether Mr. Novick's termination from his  
22 affiliations was appropriate.

23 THE COURT: Was there some kind of record made of the  
24 proceeding?

25 MS. DEMPSEY: Not that I'm aware of.

1B7FNOVC

1 THE COURT: Was there some kind of summary?

2 MS. DEMPSEY: Not that I'm aware of.

3 THE COURT: Nobody wrote a memorandum about it?

4 MS. DEMPSEY: The end result was termination was  
5 decided.

6 THE COURT: Nobody wrote a memo about it?

7 MS. DEMPSEY: Not that I'm aware of.

8 THE COURT: Have you looked?

9 MS. DEMPSEY: Yes.

10 THE COURT: Couldn't find anything?

11 MS. DEMPSEY: That's correct.

12 THE COURT: Have the people you interviewed indicated  
13 there was anything in writing?

14 MS. DEMPSEY: They did not indicate they had anything  
15 in writing.

16 THE COURT: Did you ask the question?

17 MS. DEMPSEY: I personally did not ask the question.

18 The question was asked of at least several of the people we  
19 talked with about this.

20 THE COURT: But you didn't ask anyone in that meeting?

21 MS. DEMPSEY: I --

22 THE COURT: You yourself.

23 MS. DEMPSEY: No, I've not been on the case.

24 THE COURT: Do you know who was in the meeting?

25 MS. DEMPSEY: I know several people who were in the

1B7FNOVC

1 meeting, yes.

2 THE COURT: Did you interview any of them?

3 MS. DEMPSEY: I personally did not. I'm newer to the  
4 case.

5 THE COURT: Did someone in your staff do so?

6 MS. DEMPSEY: Can I let Mr. Kalish speak to that?

7 THE COURT: Yes.

8 MR. KALISH: I spoke with, as did Mr. Finkelstein, at  
9 least one of the participants in the meetings that resulted in  
10 the termination of the two contracts at issue.

11 THE COURT: Is that in a deposition?

12 MR. KALISH: Absolutely. It's in the deposition that  
13 Mr. Finkelstein spoke with her. I spoke with her prior to the  
14 deposition and on other occasions.

15 THE COURT: Of course. So was there some kind of  
16 record made of what was going on?

17 MR. KALISH: Again, there was a record that was made,  
18 your Honor. The record was the notice of termination that was  
19 sent to Mr. Novick as well as the prior notice of cease and  
20 desist that had been sent to Mr. Novick in anticipation of  
21 having Mr. Novick have the opportunity to set forth in detail  
22 what he did and why he did it and when he did it. So, yeah,  
23 there were notices that were given, but what I understood, your  
24 Honor--

25 THE COURT: That's okay. So the national compliance

1B7FNOVC

1 office met before those notices or after?

2 MR. KALISH: The national compliance office did what  
3 they did along with senior management both before the cease and  
4 desist notice as well as the final termination decision was the  
5 final notice that went out, which was after all of the meetings  
6 and discussions, including the opportunity to give Mr. Novick  
7 an opportunity to put in writing his version of events.

8 THE COURT: So Mr. Finkelstein, what did they do that  
9 was wrong?

10 MR. FINKELSTEIN: Judge, the problem is not what they  
11 did. The question is what did they do. In fact, during this  
12 limited deposition we had with Ms. Geller, who Mr. Kalish is  
13 referring to, she said she didn't know. She was one person of  
14 I believe 11 people there, but meanwhile she was the only one  
15 we had a chance to speak to and she didn't even know what was  
16 going on. In fact, she was only working with Mr. Novick two  
17 weeks and she specifically said in her deposition they took it  
18 out of her hands because she didn't have enough background to  
19 deal with this situation.

20 Judge, you have to understand --

21 THE COURT: Did Mr. Novick avail himself of the right  
22 to set out his position before the national compliance meeting?

23 MR. FINKELSTEIN: I don't think so, Judge. In fact --

24 THE COURT: Did he submit anything?

25 MR. FINKELSTEIN: He submitted a letter three days

1B7FNOVC

1 before and that was it. He sat in the meeting, wasn't really  
2 able to speak during that meeting my understanding was and then  
3 he was terminated. The procedures are set out in the  
4 compliance manual, your Honor, and we keep going back to that.

5 THE COURT: What were those procedures?

6 MR. FINKELSTEIN: On page 123 and 124 of the  
7 compliance manual, which was given to us by defendants, which  
8 is our Exhibit I in our papers, it's called the disciplinary  
9 action program. The company had a disciplinary action program  
10 that is designed to provide a structure for remedial and  
11 disciplinary action to be taken in response to violations of  
12 laws, regulations and company policies. The disciplinary  
13 action program is developed with the objective of fulfilling  
14 the company's obligations under insurance and security laws to  
15 adequately supervise its representatives and to detect or  
16 prevent insofar as possible violations of these laws. The goal  
17 is to maintain a uniform, fair and beneficial disciplinary  
18 process for representatives and supervisors.

19 Review of the alleged violations was conducted on two  
20 levels, local and national. Field supervisors conduct the  
21 local reviews of the alleged violations and when appropriate  
22 impose sanctions after consultations with division counsel. At  
23 the national level, the national disciplinary action committee,  
24 the NDAC, and the management disciplinary action committee, the  
25 MDAC, review alleged violations and when appropriate recommend

1B7FNOVC

1 sanctions. Sanctions include but are not limited to letters of  
2 caution, reprimand, fines, enhanced supervision and  
3 termination.

4 THE COURT: So your position is that the letter of  
5 termination of relationship was issued too early, too late,  
6 without hearing, what?

7 MR. FINKELSTEIN: Without having proper due process,  
8 without him having a chance to, one, appeal, without -- I don't  
9 even know if it went to the MDAC because nobody ever discussed  
10 that at all.

11 THE COURT: Where are you reading from?

12 MR. FINKELSTEIN: Your Honor, I'm reading from our  
13 Exhibit I, it's the compliance manual.

14 THE COURT: Exhibit I to the --

15 MR. FINKELSTEIN: 2005 AXA Advisers compliance manual.

16 THE COURT: What section?

17 MR. FINKELSTEIN: Section E, disciplinary action  
18 program. And, your Honor, it goes on to tell you what are the  
19 NDAC and the MDAC and what the function is and how it's set up  
20 and who sets it up, and there's a whole litany of things that  
21 they had to do. There's been absolutely no proof in this case  
22 that any of these things were done.

23 THE COURT: You don't deny that Mr. Novick issued the  
24 solicitation e-mails that are at the heart of this, do you?

25 MR. FINKELSTEIN: Your Honor, it's not a

1B7FNOVC

1 straightforward question. I understand the question, your  
2 Honor, because Mr. Novick did issue these e-mails --

3 THE COURT: And he solicited interest in a  
4 non-approved company, didn't he?

5 MR. FINKELSTEIN: I'm sorry, Judge?

6 THE COURT: He solicited investor interest in a  
7 non-approved company.

8 MR. FINKELSTEIN: In our opinion, your Honor, the  
9 e-mails were not a solicitation at all. In fact, they were an  
10 invitation to go to a meeting.

11 THE COURT: Well, the meeting was to inform people  
12 about the company for the purpose not of giving them academic  
13 education but of interesting them in becoming investors.

14 MR. FINKELSTEIN: Judge, it was a little bit of both.

15 THE COURT: It's a multistep process to interest  
16 investors in a particular company, and it was a company that  
17 was not approved for investment by AXA.

18 MR. FINKELSTEIN: At that time when Mr. Novick, when  
19 the e-mail was sent out -- I don't want to say Mr. Novick sent  
20 out the e-mail -- at the time the e-mail was sent out, it was  
21 not approved. However, shortly thereafter, Mr. Novick did get  
22 approved by Mr. Dane to do this, which was ironically the day  
23 before he was terminated.

24 MS. DEMPSEY: If I could just correct that, your  
25 Honor.

1B7FNOVC

1 THE COURT: You may.

2 MS. DEMPSEY: The approval that Mr. Novick received on  
3 the company was for his own account only, not for soliciting  
4 for other potential customers.

5 THE COURT: Do you agree, Mr. Finkelstein?

6 MR. FINKELSTEIN: No, your Honor.

7 THE COURT: Is the approval in writing?

8 MR. FINKELSTEIN: Not that I'm aware of, Judge.

9 THE COURT: Ms. Dempsey?

10 MS. DEMPSEY: I thought that there was an e-mail to  
11 that effect.

12 MR. FINKELSTEIN: Judge, his --

13 THE COURT: One minute, Mr. Finkelstein. Let her find  
14 it. It's a rather important point.

15 MR. KALISH: If I might ever so briefly. There is an  
16 e-mail to that effect, your Honor.

17 THE COURT: Is it part of the record?

18 MR. KALISH: I don't recall whether either side used  
19 it as an exhibit to the motion.

20 MS. DEMPSEY: I don't think so.

21 MR. FINKELSTEIN: Judge --

22 THE COURT: Look, I think this motion is premature.  
23 It's geared on a theory of right, whether or not an employee  
24 who was terminated for activities that were improper was  
25 entitled to the procedures set out in the compliance manual.

1B7FNOVC

1       Given the fact that the compliance manual is not a contract,  
2       but given also the fact that it had to have some kind of a  
3       status, and that the contract made reference to it, it is not  
4       an issue that I will deal with on a Rule 12 motion. I need a  
5       full set of facts in relationship to what the plaintiff did,  
6       what was the relationship of any ratification by Mr. Dane, and  
7       the scope of it and the extent of it, and I think you folks  
8       need to do some work at discovery.

9                  The problem in the management of this case, and I take  
10       fault in that, is that I've gone along too much with delays and  
11       limitations on discovery. I think you need to finish, and I  
12       think you've gone on a piecemeal basis.

13                MS. DEMPSEY: Your Honor, may I finish? First of all,  
14       the compliance manual is not part of either contract. It's not  
15       referred to in them, it's not part of the contract.

16                THE COURT: But it was in effect in the company.

17                MS. DEMPSEY: It was in effect in the company,  
18       correct. Second, on the same page, 124, that Mr. Finkelstein  
19       was reading from in terms of the general paragraph setting out  
20       the national disciplinary action program, it goes on to say  
21       what are the NDAC and the MDAC, that's where if you read that  
22       first paragraph indicating what the NDAC is, and then it goes  
23       in the fourth line, examples of violations which should be  
24       referred to the national compliance office, which is what  
25       occurred here for possible referral to the NDAC include, but

1B7FNOVC

1 are not limited to, and then go on giving some examples. That  
2 is where it is clear that the referral beyond the national  
3 compliance office was in the crediting of AXA. Not only that,  
4 though, Mr. Novick received --

5 THE COURT: Where are you reading from?

6 MS. DEMPSEY: On page 124 of, it's also in defendant's  
7 Exhibit A, but it's in plaintiff's Exhibit I, that I think  
8 you've been handed.

9 THE COURT: I have it right in front of me. Stick  
10 with me.

11 MS. DEMPSEY: Right after subheading 1.

12 THE COURT: What are the NDAC and MDAC?

13 MS. DEMPSEY: Correct. The fourth paragraph down from  
14 that is where I began reading. I'm sorry, yes.

15 THE COURT: So it says examples of violations which  
16 should be referred to the national compliance office for  
17 possible referral to the NDAC include, but are not limited to,  
18 allegations of improper sales practices. All right, so that  
19 means there's discretion of whether --

20 MS. DEMPSEY: That's right.

21 THE COURT: To refer or not.

22 MS. DEMPSEY: Discretion, that's right. And not only  
23 is there discretion, but Mr. Novick received without dispute  
24 the functional equivalent of an NDAC review in the sense that  
25 he received review by senior management on a national level

1B7FNOVC

1 with the participation of senior management on the branch level  
2 and the participation of Bob Jones, who selects the members of  
3 the NDAC.

4 THE COURT: What are DP's? The NDAC is a five-member  
5 committee composed of DP's and BRM's.

6 MS. DEMPSEY: Divisional president.

7 THE COURT: And what are BRM's?

8 MS. DEMPSEY: It's branch managers. It's branch  
9 manager, BR is for branch.

10 THE COURT: So what's the problem, Mr. Finkelstein?

11 MR. FINKELSTEIN: Your Honor, first of all, we don't  
12 even know who these five members were, whether or not that  
13 actually occurred. All we know is that we sat at one meeting  
14 on the 11th in a room with a bunch of people, weren't able to  
15 say anything and next day we're getting terminated. By the  
16 way, Judge, just to go back to your prior point --

17 THE COURT: Stick with this one. Stick with this  
18 point. I'll let you go --

19 MR. FINKELSTEIN: If you look at --

20 THE COURT: One minute, Mr. Finkelstein --

21 MR. FINKELSTEIN: If you look at --

22 THE COURT: One minute.

23 MR. FINKELSTEIN: Oh, I'm sorry, Judge.

24 THE COURT: Ms. Dempsey, I'm looking at paragraph 2 at  
25 the bottom of page 124 which reads, "When a matter is referred

1 to the MDAC the representative involved should submit a written  
2 response to the allegations." Was he invited to do so?

3 MS. DEMPSEY: He was.

4 THE COURT: Is that by a letter?

5 MS. DEMPSEY: Yes.

6 THE COURT: And did he?

7 MS. DEMPSEY: He did.

8 THE COURT: And that was part of the matter that was  
9 reviewed at the conference or hearing that Mr. Finkelstein is  
10 referring to?

11 MS. DEMPSEY: It was.

12 THE COURT: And what was the result of that?

13 MS. DEMPSEY: Per se of the review? I don't know. I  
14 wasn't at the meeting, but the entire result was his  
15 termination.

16 THE COURT: "The BRM," it says in the second sentence,  
17 "supervising the representative should also submit a written  
18 statement providing relevant information regarding the  
19 allegations." Was that done?

20 MS. DEMPSEY: I believe it was. I don't think it's  
21 part of this record, but I'm fairly certain.

22 THE COURT: I'm just not going to deal with a record  
23 that's not full. The motion is denied. Where do you want to  
24 go next?

25 MR. FINKELSTEIN: Your Honor, we'd like to continue

1B7FNOVC

1 with discovery. As your Honor is aware --

2 THE COURT: What discovery do you want?

3 MR. FINKELSTEIN: We want further e-mails, we want  
4 audiotapes.

5 THE COURT: Just start. You asked for e-mails didn't  
6 you?

7 MR. FINKELSTEIN: Prior counsel asked for e-mails.

8 THE COURT: Were they supplied?

9 MS. DEMPSEY: Yes. 15,000 e-mails have been supplied  
10 two and a half years ago.

11 THE COURT: You're not getting more, Mr. Finkelstein.

12 MR. FINKELSTEIN: I'm sorry, Judge?

13 THE COURT: You're not getting more.

14 MR. FINKELSTEIN: Judge, the problem is the e-mails  
15 that were supplied, the people they allegedly searched as the  
16 search terms and the search, have nothing to do with this  
17 matter.

18 THE COURT: Doesn't make any difference?

19 MR. FINKELSTEIN: Judge, with all due respect --

20 THE COURT: This was done when?

21 MR. FINKELSTEIN: Prior counsel did all this.

22 THE COURT: How many years ago?

23 MR. FINKELSTEIN: We've only been involved in this  
24 case for less than a year, so it was before that. I think two  
25 years ago.

1B7FNOVC

1           THE COURT: We're not redoing it.

2           MR. FINKELSTEIN: Judge, if we're not going to -- the  
3 e-mails that we received, okay, were limited in stature. We  
4 want to expand the search.

5           THE COURT: What was the limitation?

6           MR. FINKELSTEIN: The people that they searched have  
7 nothing to do with this matter. I don't even know why prior  
8 counsel agreed to the search terms.

9           THE COURT: But he did.

10          MR. FINKELSTEIN: I can't speak to that.

11          THE COURT: He did and I'm not redoing it.

12          MR. FINKELSTEIN: Judge, we also need further  
13 depositions, obviously.

14          THE COURT: Which depositions do you need?

15          MR. FINKELSTEIN: First of all, we'd like to know who  
16 the five members of the NDAC were. We still have never been  
17 told that.

18          THE COURT: Weren't they revealed in the discovery  
19 that you received?

20          MR. FINKELSTEIN: Absolutely not, Judge, and in fact  
21 Ms. Geller who was there never gave us specifics as to who was  
22 there. We'd like to take those people's depositions.

23          THE COURT: Ms. Dempsey, do you know who was there?

24          MS. DEMPSEY: At the meeting, we have a record of who  
25 was at the meeting. To be clear, it is not precisely an NDAC

1B7FNOVC

1 meeting which defendant's position is was not required. It was  
2 senior management that gave him every benefit and possibly more  
3 of an NDAC meeting. We certainly can look at who was there.

4 MR. FINKELSTEIN: Judge, this is my problem.

5 THE COURT: Just a minute, Mr. Finkelstein.

6 MR. FINKELSTEIN: I'm sorry, Judge.

7 THE COURT: With regard to the record of who was there  
8 and who functioned as the, you say equivalent, was that a  
9 record that was turned over to Mr. Finkelstein or prior  
10 counsel?

11 MS. DEMPSEY: He took a deposition on someone who was  
12 there who named several or all of the people who were there as  
13 well.

14 THE COURT: You didn't answer my question. You said  
15 there was a writing that said who was there. Was that writing  
16 turned over to plaintiff's lawyers?

17 MS. DEMPSEY: I don't believe there was a writing  
18 which said who was there. I would ask people who were there,  
19 Ms. Geller, for one, as he did at his deposition.

20 THE COURT: I find it very hard to believe that no one  
21 wrote a memorandum of what happened.

22 MR. FINKELSTEIN: Judge, I can tell you --

23 THE COURT: One minute, Mr. Finkelstein.

24 MR. FINKELSTEIN: I'm sorry.

25 MS. DEMPSEY: I can't speak to why someone may not

1 have written a memorandum.

2 THE COURT: Mr. Kalish, do you know?

3 MR. KALISH: I can't speak either. I will say a  
4 couple of things that are responsive to what your Honor is  
5 inquiring into. Number one, I'm relatively certain there was  
6 never any interrogatory that asked for the identification of  
7 the people who were present there. Number two, I do believe  
8 that there were note takers among the participants at the  
9 meeting, and that the notes are likely privileged notes, since  
10 it was lawyers who were involved --

11 THE COURT: No, they weren't. Not privileged. Not  
12 privileged.

13 MR. KALISH: Again, it depends on the context of what  
14 the notes say.

15 THE COURT: I hold they're not privileged. If there's  
16 a request for advice, legal advice, then I will consider  
17 privilege. Otherwise they're not privileged.

18 MR. KALISH: Again, we need to take a look at whether  
19 the notes are response to legal advice or just a litany of who  
20 said what at meetings.

21 THE COURT: I want you to turn it over.

22 MR. KALISH: I believe that's why there's no memo,  
23 your Honor, is that the people participating in the meeting and  
24 making decisions in connection with the meeting know what  
25 happened at the meeting.

1                   THE COURT: I want you or Ms. Dempsey to look for and  
2 produce to Mr. Finkelstein all records that refer or relate to  
3 that meeting.

4                   MR. KALISH: Your Honor, we will make a production  
5 and/or log and/or reiterate what previously was logged.

6                   THE COURT: I tell you now, do not hold back summaries  
7 and notes that were taken. You can redact any legal -- any  
8 question to a lawyer for legal advice and response, but only  
9 that. And that should be done within two weeks. This case is  
10 going to move. And following that, Mr. Finkelstein, you have a  
11 month to take any depositions you want of those who were in  
12 that room.

13                  MR. FINKELSTEIN: Judge, I understand that, but we  
14 also want depositions of other people as well.

15                  THE COURT: What other people?

16                  MR. FINKELSTEIN: Compliance officers who were there  
17 when Mr. Novick was there. After deposing Mr. Dometti or  
18 Ms. Geller who were only there for a short period of time --

19                  THE COURT: No. They're not relevant. The compliance  
20 manual I can read myself, but you can ask about what happened  
21 at the meeting.

22                  MR. FINKELSTEIN: Judge, by the way, just to get back  
23 to your question that I was alluding to before, Mr. Novick's  
24 agreement, his AXA Advisers agreement, registered rep agreement  
25 on page 5, by the way, does mention a compliance manual, AXA

1B7FNOVC

1 Advisers, as it is formally known in the form of compliance  
2 guides or manuals. So it's actually a contract.

3 THE COURT: We're past the point, Mr. Finkelstein,  
4 I've denied the motion, right?

5 MR. FINKELSTEIN: Yes, Judge.

6 THE COURT: So you don't need to bring that up. Any  
7 other deposition that either side wants?

8 MS. DEMPSEY: We would take the deposition of Mr.  
9 Novick regarding our counterclaim, our outstanding  
10 counterclaim.

11 THE COURT: What is the counterclaim? Remind me.

12 MS. DEMPSEY: For unpaid note, an outstanding note.

13 THE COURT: Why do you need the counterclaim? You  
14 have the note. I already gave you summary judgment on it.

15 MS. DEMPSEY: We had summary judgment on one of two  
16 notes, your Honor.

17 THE COURT: And the second note?

18 MS. DEMPSEY: The second note was partly a forgivable  
19 loan. Yes, was a forgivable loan.

20 THE COURT: You didn't forgive it?

21 MS. DEMPSEY: I think part of it was forgiven,  
22 actually.

23 THE COURT: So what's the need for the note?

24 MS. DEMPSEY: For the deposition?

25 THE COURT: Right.

1B7FNOVC

1 MS. DEMPSEY: Well, when we took his deposition prior  
2 we only focused it on what we understood the Court's limited  
3 discovery was.

4 THE COURT: All right, you can take his deposition on  
5 what happened at the meeting. I don't think there's anything  
6 in the note that's really of interest. You can take his  
7 deposition about what happened at the meeting.

8 MR. FINKELSTEIN: Judge, along the same lines there's  
9 the contention about the accounting, as your Honor is aware.  
10 They provided an accounting and this is our contention about  
11 this second note. The reason why they haven't sued on this  
12 second note in the five years is because, as they stated, it's  
13 a forgivable note and in order to figure out what is forgiven  
14 they also have to figure out what Mr. Novick was paid.

15 THE COURT: Let's suppose, Mr. Finkelstein, that he  
16 was terminated properly. Do you have any right to get any  
17 money?

18 MR. FINKELSTEIN: Yes, your Honor.

19 THE COURT: Why?

20 MR. FINKELSTEIN: Because they also raided his book of  
21 business and took his clients to the tune of \$70 million.

22 THE COURT: What's the law, Ms. Dempsey? If you  
23 terminated him properly for improper sales conduct, does he  
24 still have an entitlement to commissions?

25 MS. DEMPSEY: He has an entitlement to the commissions

1 that he earned and he was paid those.

2 THE COURT: He says he wasn't. I think this has to do  
3 not so much with whether he was paid on a current basis, but  
4 whether the customers stayed with AXA, right, Mr. Finkelstein?

5 MR. FINKELSTEIN: Yes, your Honor. Along the same  
6 lines --

7 THE COURT: So let me ask you this, Mr. Finkelstein.  
8 When he left AXA, where did he go? He lost his license, you  
9 said.

10 MR. FINKELSTEIN: Within a month, your Honor, he found  
11 a new home, and he started his business up again.

12 THE COURT: So I assume he gave notice to each of his  
13 customers?

14 MR. FINKELSTEIN: No, he didn't, Judge. In fact they  
15 gave notice to each of his customers that said he left and said  
16 specifically --

17 THE COURT: He could have given notice to all his  
18 customers?

19 MR. FINKELSTEIN: He could have. He didn't have his  
20 clients, they took his personal stuff, they never gave it back.  
21 There's a lot of issues, Judge, and he had a contract, as you  
22 stated, to keep his book of business. They summarily went  
23 after his book of business. They sent people to his clients'  
24 homes, wrote letters. It's all attached to the records, Judge.  
25 Not to belabor this point, but going back to the accounting --

1                   THE COURT: I'll tell you what, both of you can take  
2 those depositions also with regard to that second counterclaim  
3 and the accounting.

4                   MS. DEMPSEY: Okay. But, your Honor, if I may, we did  
5 brief the issue as to his book of business when he -- and there  
6 is no contractual entitlement that AXA not contact his  
7 customers after he leaves. As a matter of fact, if they  
8 didn't --

9                   THE COURT: I didn't say there was. I didn't say  
10 there was.

11                  MS. DEMPSEY: Okay. I just --

12                  THE COURT: I would think that the law is that if  
13 Mr. Novick has a right to go after his clients and you have the  
14 right to go after the clients that he gave to AXA, the clients  
15 have the right to decide what they wish to do.

16                  MS. DEMPSEY: Exactly, your Honor.

17                  THE COURT: And when they have the right to decide  
18 what to do, and both AXA and Novick are competing for the same  
19 clients, the continuation of business, of one client or another  
20 is not the business of the other company. So in other words,  
21 if clients decide to go to AXA at a time when Novick is or has  
22 the right to solicit them, to solicit them or has the right to  
23 solicit them, Novick is no longer entitled to commissions.

24                  MS. DEMPSEY: Correct, he's entitled to the  
25 commissions --

1B7FNOVC

1                 THE COURT: That's the rule in the case, he's entitled  
2 to commissions up to that. I take it that's a month. So  
3 that's the rule. You're entitled to commissions up to a month  
4 after termination but not after.

5                 MR. FINKELSTEIN: Judge, I understand that, but that's  
6 not the issue. The issue is whether or not they improperly  
7 solicited his clients.

8                 THE COURT: I hold they did not improperly solicit his  
9 clients. They had a right to. But this would be following the  
10 propriety of the termination. If he engaged in an improper  
11 conduct of this nature, it seems to me that the company's got  
12 the right to terminate him.

13                 MR. FINKELSTEIN: Judge, but one has nothing to do  
14 with the other.

15                 THE COURT: I disagree. I hold it does.

16                 MR. FINKELSTEIN: I understand, Judge, but here's my  
17 concern. Let's assume that Mr. Novick wasn't wrongfully  
18 terminated and just left, then they tried to solicit his  
19 business, would we have the same issue? He had a contractual  
20 right to keep his clients, that's why he went there.

21                 THE COURT: That's not the case here. Where do you  
22 see that contractual right?

23                 MR. FINKELSTEIN: Attached to our papers, Judge.

24                 THE COURT: What exhibit?

25                 MR. FINKELSTEIN: I'll show you the exhibit. Judge,

1B7FNOVC

1 just one second. Exhibit K.

2 THE COURT: That's not a contract, is it?

3 MR. FINKELSTEIN: It's a clarifying document, your  
4 Honor.

5 THE COURT: Signed by both sides?

6 MR. FINKELSTEIN: Yes.

7 THE COURT: What paragraph?

8 MR. FINKELSTEIN: The last paragraph. Any customer  
9 list provided to --

10 THE COURT: I'll read it. One moment.

11 MR. FINKELSTEIN: Thank you, Judge.

12 (Pause)

13 THE COURT: You have a right to keep only those  
14 customers whose business does not pertain to the business of  
15 AXA Advisers or its affiliates.

16 MS. DEMPSEY: Your Honor --

17 THE COURT: As I read that clause.

18 MR. FINKELSTEIN: Looking at the last line, it says  
19 are and remain the property of the associate and need not be  
20 turned over to AXA Advisers should the associate be terminated  
21 by AXA Advisers.

22 THE COURT: You forgot the sentence that qualifies it.

23 The whole sentence is, "Customer lists provided by the  
24 associate to AXA Advisers as part of the associate's initial  
25 hiring or contracting with AXA Advisers or developed by an

1 associate during the associate's affiliations with AXA  
2 Advisers," and here's the key part, "which do not pertain to  
3 the business of AXA Advisers." It's only those that aspect of  
4 the business which do not pertain to the business. Obviously,  
5 the customers that remained with AXA pertain to AXA's business.  
6 So I disagree with you, Mr. Finkelstein.

7 MR. FINKELSTEIN: Judge, I don't read it that way.

8 THE COURT: That's the way I read it.

9 MR. FINKELSTEIN: Judge, I understand, but here's my  
10 concern. Mr. Novick came over with a \$100 million book of  
11 business. So reading it the way the Court would like to  
12 interpret the language, it means that I can fire you at any  
13 time and I can keep your book of business. Oh, on top of that,  
14 we also gave you a million and a half dollars because you are a  
15 large producer and based upon your book of business you're  
16 going to be able to repay all this money because of the amount  
17 of monies that your book of business will generate.

18 THE COURT: I read the contract, Mr. Finkelstein for  
19 what the contract says and the contract clause is "which do not  
20 pertain to the business of AXA Advisers." I'm not saying that  
21 Novick is precluded from dealing with these clients. If  
22 they're his clients, they'll go with him, but neither is AXA  
23 precluded from dealing with them. So the rule in the case is  
24 that those clients which Novick turned over to AXA and before  
25 the time that Novick had the opportunity to solicit them, are

1 clients which pertain to Novick. After that period the clients  
2 are entitled to go where they want and Novick does not have any  
3 further right on someone who enjoys that clientele. Anything  
4 else?

5 MR. FINKELSTEIN: Judge, I'd just like to clarify  
6 that. He came over with \$100 million --

7 THE COURT: You're not looking to clarify. You're  
8 looking to reargue.

9 MR. FINKELSTEIN: No, I'm not. I want to be clear  
10 about this one point. He came over with \$100 million of  
11 clients. Are you saying that once he came over the clients are  
12 no longer his?

13 THE COURT: That's reargument, Mr. Finkelstein. You  
14 heard my rule. If you can't remember it, you can buy the  
15 transcript.

16 How much time would it take you to do all this  
17 discovery? By January 31, 2012 all discovery should close is  
18 my feeling.

19 MS. DEMPSEY: If we could extend it for about two  
20 weeks?

21 THE COURT: Because why?

22 MS. DEMPSEY: Another trial I have right now.

23 THE COURT: No. Get someone else in your office to do  
24 it. Epstein Becker is a big firm.

25 MR. FINKELSTEIN: Judge, I understand your ruling,

1B7FNOVC

1 going back to the accounting, it was our contention that the  
2 accounting that was provided is just a recapitulation of what  
3 Mr. Novick was paid and not what his business generated.

4 THE COURT: You have to extend it out to the period of  
5 the notice. When would you say Mr. Novick had the opportunity  
6 to solicit his clients, Ms. Dempsey?

7 MS. DEMPSEY: I would say he had the opportunity to  
8 solicit his clients as soon as he left AXA.

9 THE COURT: No, he had to get to another company.

10 MS. DEMPSEY: Then he said he was with another company  
11 within a month. I think it was less than a month, but I don't  
12 have it in front of me.

13 THE COURT: Take 30 days after he's terminated. Is  
14 that okay, Mr. Finkelstein?

15 MR. FINKELSTEIN: Judge, I have to talk to Mr. Novick.

16 THE COURT: Talk to him. He's right there.

17 MR. FINKELSTEIN: I understand the Court's position, I  
18 don't agree with it.

19 THE COURT: I understand you don't agree with it, you  
20 object to it. If I'm wrong I'll be reversed, but that's the  
21 ruling.

22 MR. FINKELSTEIN: Judge, the answer to your question  
23 is Mr. Novick found a home within 30 days, but it's our  
24 contention, as I stated before, that the business he brought  
25 there was his business, he contracted for it.

1B7FNOVC

1           THE COURT: I know you did. I've already rejected  
2 that. It's 30 days, Ms. Dempsey.

3           MS. DEMPSEY: I understand.

4           THE COURT: Extend your accounting out to 30 days.

5           MS. DEMPSEY: 30 days past his termination.

6           THE COURT: What was his termination, what date?

7           MS. DEMPSEY: His termination was October 12, 2006.

8           MR. FINKELSTEIN: Judge, that's not the --

9           THE COURT: October 12, 2006?

10          MR. KALISH: Your Honor, if I could be heard  
11 momentarily. His accounting actually that we already provided  
12 is through, if I remember correctly, May 31 of 2011. We did  
13 the accounting to the present date because the reality is, is  
14 that there's an entitlement to certain small amounts of money  
15 that continues to the present time. And therefore the  
16 accounting that we provided to Mr. Novick not only covers one  
17 month after his termination but to today's date.

18          THE COURT: Write him a letter that describes what  
19 you've set out and what your position is, Mr. Kalish, but I  
20 hold that the clients that were given by Mr. Novick to AXA  
21 Advisers resulting in business to AXA entitle Mr. Novick to  
22 commissions through December 31, 2006. That's over 30 days,  
23 about 45 days. Okay. Anything else?

24          MR. FINKELSTEIN: Judge, I understand what the Court  
25 is requesting, but that's not what we're asking. What we're

1B7FNOVC

1 asking for is not what his book of business, what he earned off  
2 of his book of business. We're trying to find out what his  
3 book of business generated, what revenues were generated by his  
4 book of business.

5 THE COURT: That's part of the accounting.

6 MR. FINKELSTEIN: Right, but it was never given.  
7 That's what the problem is here.

8 THE COURT: Mr. Kalish?

9 MR. FINKELSTEIN: Judge, what I could have done --

10 THE COURT: Mr. Kalish, what kind of information did  
11 you give Mr. Finkelstein?

12 MR. KALISH: We gave Mr. Finkelstein and his prior  
13 counsel information concerning every nickel that Mr. Novick got  
14 paid and every --

15 THE COURT: Were the records sufficient to allow his  
16 accountant to go over with him and either agree or disagree  
17 with what you've done?

18 MR. KALISH: Absolutely, your Honor.

19 THE COURT: Which means you gave him revenues as well  
20 as final figures?

21 MR. KALISH: Well, we gave the information with regard  
22 to his own earnings that related from his business. We did not  
23 provide individual records from each and every client, each and  
24 every month, each and every --

25 THE COURT: I think he's entitled to see all that goes

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1 into the creation of the commission figure.

2 MR. KALISH: But it doesn't, your Honor, that's the  
3 point here. And ironically, and this is one of the frustrating  
4 things, is that that was a debate that was had in 2009 in the  
5 first part of the year with Mr. Finkelstein's predecessor.

6 There's no linkage between the amount of revenues generated by  
7 his quote-unquote book of business and the amount of  
8 commissions and other payments that Mr. Novick was entitled to  
9 get. We gave all of the schedules --

10 THE COURT: How do you figure out his commissions?

11 MR. KALISH: The details of it are in the documents  
12 we've already produced and that's what the accountant could be  
13 useful to take a look at. I can't answer that.

14 THE COURT: I would think that commissions are a  
15 factor of total revenues produced by the book of business.

16 MR. KALISH: They are not, your Honor. As the two  
17 contracts that are part of this record reflect, Mr. Novick will  
18 be paid under the insurance contract as follows, will be paid  
19 under the AXA -- the brokerage firm's, AXA Advisers contract as  
20 follows. Neither of them uses as a factor the gross revenues  
21 that were generated on behalf of AXA that were attributable to  
22 his book of business.

23 THE COURT: What do they use?

24 MR. KALISH: They use different schedules. In fact,  
25 why don't you read, Aime, what it says they used. It's right

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1 in the contracts.

2 THE COURT: What exhibit is it again?

3 MS. DEMPSEY: It's Exhibit A to the second amended  
4 complaint. It's also found I think in --

5 THE COURT: How about Finkelstein's papers?

6 MS. DEMPSEY: In Finkelstein, it's F as in Frank --  
7 I'm sorry, G -- one is at F, one is at G. The advisor's  
8 agreement is at Finkelstein's F.

9 THE COURT: So where do you want me to look, Mr.  
10 Kalish?

11 MS. DEMPSEY: For the advisor's agreement --

12 THE COURT: Just tell me one place to look. What  
13 exhibit?

14 MR. KALISH: Exhibit F at paragraph 3, your Honor, on  
15 the first page of Exhibit F, where it's called commissions and  
16 service fees.

17 THE COURT: I see it. All right. It doesn't help me  
18 because it refers to schedules and rules published from time to  
19 time by or on behalf of AXA Advisers.

20 MR. KALISH: Exactly, your Honor, and that's what I  
21 was referring to to materials that have been produced in  
22 discovery.

23 THE COURT: You make sure, Mr. Kalish, you go over  
24 these very carefully. You make sure that every document that  
25 will be used by an accountant to determine what his commission

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1 should have been are given to Mr. Finkelstein or were given to  
2 Mr. Finkelstein. If they were given to Mr. Finkelstein, you  
3 can be excused from production by making reference to a  
4 specific production number.

5 MR. FINKELSTEIN: Judge, all we're asking for is what  
6 the book of business generated, the revenues generated, not  
7 what was he paid. That's not what was given to us.

8 THE COURT: If Mr. Kalish is telling you that's not  
9 relevant -- I don't understand how that can be so, but if Mr.  
10 Kalish goes over the documents referred to in this paragraph  
11 and can show to Mr. Finkelstein what are the bases other than  
12 revenues, he can do that. Whatever is the basis for  
13 commissions in the ordinary course of business will be the rule  
14 of this case.

15 All right, fact discovery closes January 31, 2012. No  
16 enlargements, no excuses. I will then see you January 13 at  
17 10:00, it's a Friday, to discuss where we go from here.  
18 Presumably it will be motion practice and if either side wants  
19 to make a motion before the meeting, that party will elicit a  
20 schedule to be given to me at the meeting. All motions will  
21 have to be made at one particular point in time and a schedule  
22 should go accordingly so that there will be only three rounds  
23 of submissions of memorandum and other papers. Any motion must  
24 be a dispositive motion. Let's get rid of all or substantially  
25 all of the case.

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1                   MR. FINKELSTEIN: Judge, just to clarify something.  
2 We're having -- you said that no enlargements, no excuses, all  
3 discovery will be complete by January 31, correct?

4                   THE COURT: Don't do that to me.

5                   MR. FINKELSTEIN: Judge, the only reason why I'm  
6 asking is because you just set a conference on January 13,  
7 prior to the cutoff date.

8                   THE COURT: That's a good point.

9                   MR. FINKELSTEIN: That's why, Judge. I just, you  
10 know --

11                  THE COURT: Yes, yes, you got me.

12                  MR. FINKELSTEIN: I don't mean to, but --

13                  THE COURT: You got me cold. All right, we'll do it  
14 on February 10. That's a Friday. The same rules apply about  
15 motions. All right?

16                  MR. FINKELSTEIN: Thank you, Judge.

17                  THE COURT: Okay.

18                  MS. DEMPSEY: Thank you.

19                  MR. KALISH: Thank you, your Honor.

20                  THE COURT: We'll issue a summary order reflecting our  
21 discussions here and whatever rules were put down.

22                  (Adjourned)

23

24

25

## **EXHIBIT F**

## 2005 AXA ADVISORS COMPLIANCE MANUAL

### Table of Contents

#### Chapter 1: Introduction

|   |    |
|---|----|
| A. Topics Covered & Key Terms                           | 6  |
| B. Reporting Violations                                 | 10 |
| C. Insurance Marketplace Standards Association ("IMSA") | 10 |

#### Chapter 2: Licensing & Securities Registration

|  |    |
|--|----|
| A Representatives' Qualifications  | 12 |
| B. Supervisors' Qualifications   | 15 |
| C. Securities Registration Applications: Proper Disclosures & Procedures | 17 |
| D. Procedures for Renewal of Licenses & Securities Registrations         | 18 |
| E. Revisions to Form U-4 Applications                                    | 19 |
| F. Continuing Education  | 20 |
| G. Termination Procedures  | 23 |

#### Chapter 3: Representatives' Disclosures, Notifications & Prohibited Activities

|   |    |
|---|----|
| A. Outside Business Activities                  | 26 |
| B. Practice Enhancement Program                 | 28 |
| C. Personal Accounts with Other Broker/Dealers  | 29 |
| D. Private Securities Transactions/Selling Away | 31 |
| E. Initial Public Offerings                     | 33 |

## 2005 AXA ADVISORS COMPLIANCE MANUAL

|   |    |
|---|----|
| F. Insider Trading  | 33 |
| G. Unauthorized Trading: Discretionary Accounts, Powers of Attorney & Trustees        | 34 |
| H. Interest in Client Matters: Sharing Ownership & Profits                            | 35 |
| I. Commingling and Misappropriation of Client Funds                                   | 35 |
| J. Excessive Trading in Client Accounts   | 36 |
| K. Market Timing Services   | 36 |
| L. Recommending Independent Investment Advisors                                       | 36 |
| M. Viatical Settlements   | 37 |
| N. Privacy, Authenticity & Accuracy of Client Information, Documentation and Accounts | 37 |
| O. Client Address of Record   | 40 |
| P. Fair Competition   | 40 |

### **Chapter 4: Sales & Business Practices**

|   |    |
|---|----|
| A. Prospecting                              | 43 |
| B. Sales Presentations                      | 46 |
| C. Suitability                              | 47 |
| D. Replacements                             | 52 |
| E. Insurance Sales Disclosures and Delivery | 55 |
| F. Annuity Sales Disclosures and Delivery   | 58 |
| G. Approved Insurance Applications & Forms  | 58 |
| H. Prospectuses                             | 59 |
| I. Sample Documents                         | 60 |

## 2005 AXA ADVISORS COMPLIANCE MANUAL

|                                   |    |
|-----------------------------------|----|
| J. Mutual Fund Sales              | 60 |
| K. Brokerage Services             | 64 |
| L. Investment Advisory Activities | 67 |

### **Chapter 5: Commissions, Payments & Gifts**

|  |    |
|--|----|
| A. Gifts, Gratuities & Promotional Items | 75 |
| B. Cash/Non-Cash Compensation            | 77 |
| C. Client Payments                       | 78 |
| D. Commission Sharing                    | 80 |
| E. Anti-Money Laundering Policy          | 81 |
| F. International Business Transactions   | 84 |

### **Chapter 6: Communications**

|  |     |
|--|-----|
| A. Stationery & Business Cards   | 86  |
| B. Titles & Designations   | 87  |
| C. D/B/A Names   | 90  |
| D. Company Signage   | 93  |
| E. Unauthorized Use of Company Name and Logo                                 | 94  |
| F. Advertising & Sales Materials   | 94  |
| G. Outgoing Correspondence   | 102 |
| H. Incoming Correspondence   | 103 |
| I. Internet Policy: Electronic Correspondence, Advertising & Sales Materials | 107 |
| J. Compliance-Related Field Communications                                   | 110 |

**2005 AXA ADVISORS COMPLIANCE MANUAL**

|                         |     |
|-------------------------|-----|
| K. Other Communications | 110 |
|-------------------------|-----|

**Chapter 7: Additional Compliance & Supervisory Requirements**

|  |     |
|--|-----|
| A. Supervision of Representatives                                    | 112 |
| B. Branch Manager Delegations  | 117 |
| C. Manager's Fund  | 119 |
| D. Client Complaints   | 120 |
| E. Disciplinary Action Program                                       | 123 |
| F. Annual Compliance Meetings  | 125 |
| G. Annual Compliance Notification Forms                              | 127 |
| H. Annual Compliance Interviews                                      | 127 |
| I. Compliance Examinations & The Regional Compliance Officer Program | 128 |

**Chapter 8: Record Keeping and Contact with Regulators**

|                                    |     |
|------------------------------------|-----|
| A. Required Documentation          | 131 |
| B. Documentation Retention Periods | 152 |
| C. Contact with Regulators         | 154 |

**APPENDIX**

|                              |  |
|------------------------------|--|
| NASD Notice to Members 98-38 |  |
|------------------------------|--|

## **2005 AXA ADVISORS COMPLIANCE MANUAL**

## Chapter 1

| Introduction  | Page |
|---|------|
| A. Topics Covered & Key Terms                           | 6    |
| B. Reporting Violations                                 | 10   |
| C. Insurance Marketplace Standards Association ("IMSA") | 10   |

## 2005 AXA ADVISORS COMPLIANCE MANUAL

AXA Advisors, LLC, The Equitable Life Assurance Society of the United States, AXA Network, LLC and affiliated companies ("the Company") are committed to conducting business according to the highest standards of honesty and fairness. The Company's compliance program is designed to support its sales force and other personnel (together, our "Representatives") in meeting these standards through careful adherence to all applicable laws, rules, regulations and Company policies and procedures. The compliance program is routinely updated to enable the Company and its Representatives to keep pace with changing client needs, market conduct standards and regulatory developments. This revised Manual incorporates many recent compliance program developments. Changes to the Company's compliance program are generally communicated through Company-approved field communications marked as "compliance-related." See Section on Compliance-Related Field Communications.

This Manual is not an exhaustive review of all Representatives' obligations. Rather, it is an overview of important responsibilities and procedures designed to help Representatives and supervisors fulfill those responsibilities. The Company's compliance policies require that Representatives comply with all Company guidelines (such as the Policy Statement on Ethics) and applicable local, state and federal laws (such as the NASD Inc.'s Rules ("NASD Rules")) whether or not they are specifically addressed in this Manual.

### A. Topics Covered and Key Terms

#### 1. Who Does This Manual Apply To?

Unless specifically stated otherwise, the following personnel are considered "Representatives" and must adhere to the provisions of this Manual:

- Associates, including pre-contract, dual professional and corporate agents, whether or not they are registered with the NASD;
- Supervisors, including Divisional Presidents ("DPs"), Branch Managers ("BRMs"), District Managers ("DMs") and other functional directors;
- Employees who are registered with the NASD, such as those in the Operations Centers or the National Headquarters. Although this Manual will typically refer to field representatives and supervisors, securities registered employees must be aware of and comply with all relevant requirements contained in this Manual; and
- All other AXA Advisors securities registered or investment advisory representatives.

## 2005 AXA ADVISORS COMPLIANCE MANUAL

Except where the context otherwise requires, the provisions of this Manual also apply to insurance brokers who are contracted with AXA Network under agency-sponsored brokerage arrangements (i.e., brokers who are associated with an AXA Network agency), in the context of their solicitation, sale or servicing of Equitable or AXA Advisors products and services. In general, however, the provisions of this Manual shall not apply to brokers who are registered with another broker/dealer and whose solicitation, sale or servicing of our products is conducted pursuant to a selling agreement between the Company and such broker/dealer.

### 2. What Terms Are Used In This Manual?

The following references are frequently used in this Manual:

- "The Company" refers to Equitable Life, AXA Network, LLC, Equitable of Colorado, Inc. and AXA Advisors, LLC and their successors. To the extent that certain provisions apply only to one specific company, a reference will be made to the company name;
- The term "insurance" refers to all insurance and annuity contracts; and
- Below is a brief summary of abbreviations used throughout this Manual.

|              |  |
|--------------|--|
| ABA          | AXA Brokerage Account                        |
| ACU          | Advertising Compliance Unit                  |
| AAM          | AXA Advanced Markets Group (formerly ASG)    |
| ALC          | Advisors Learning Center                     |
| AHCA         | Associate Hiring and Contract Administration |
| AXA Advisors | AXA Advisors, LLC                            |
| AXA Network  | AXA Network, LLC                             |
| B/D          | Broker/Dealer                                |
| BCM          | Branch Controls Manager                      |
| BCS          | Branch Controls Specialist                   |

2005 AXA ADVISORS COMPLIANCE MANUAL

|                             |  |
|-----------------------------|--|
| BRM                         | Branch Manager   |
| CBT                         | Computer-based training (NASD)                                       |
| CRO                         | The Customer Relations Office  |
| CV                          | Capital Visions  |
| DBP                         | Director of Business Practices, a member of the Divisional staff     |
| DCOO                        | Divisional Chief Operating Officer                                   |
| DP                          | Divisional President   |
| DM                          | District Manager   |
| EOC                         | Equitable of Colorado, Inc.  |
| Equitable or Equitable Life | The Equitable Life Assurance Society of the United States            |
| FPC                         | Financial Planning Center  |
| Form U-4                    | Uniform Application for Securities Industry Registration or Transfer |
| Form U-5                    | Uniform Termination Notice for Securities Industry Registration      |
| IAR                         | Investment Advisory Representative of AXA Advisors                   |
| IMCG                        | Integrated Marketing and Communications Group                        |
| MDAC                        | The Management Disciplinary Action Committee                         |
| NAIC                        | National Association of Insurance Commissioners                      |
| NCO                         | National Compliance Office   |
| NDAC                        | The National Disciplinary Action Committee                           |

**2005 AXA ADVISORS COMPLIANCE MANUAL**

|           |   |
|-----------|---|
| OBA       | Outside Business Activity   |
| OM        | Operations Manager  |
| OSJ       | Office of Supervisory Jurisdiction  |
| RBG       | Retirement Benefits Group   |
| RCO       | Regional Compliance Officer, a member of the National Compliance Office                               |
| Regulator | Any official representing a federal, state or local governmental/regulatory authority                 |
| RIA       | Registered Investment Advisor   |
| RR        | Registered Representative, including securities registered brokers, associated persons and principals |
| SEC       | Securities and Exchange Commission  |
| VRU       | Licensing Voice Response Unit   |

## 2005 AXA ADVISORS COMPLIANCE MANUAL

### 3. How Does This Manual Affect Representatives?

Representatives are required to carefully adhere to the policies and procedures described in this Manual and any revisions to this Manual posted on the Intranet and on eDOX. This Manual will be updated from time to time by field communications identified as "compliance-related." Representatives are responsible for promptly reviewing and adhering to all such changes and additions to our compliance policies and procedures. See Section regarding Compliance-Related Field Communications. Failure to adhere to compliance policies and procedures may result in disciplinary action by the Company and/or industry regulators, and/or civil or criminal penalties by law enforcement or other authorities.

Representatives should contact their supervisor, the Director of Business Practices ("DBP") or other compliance personnel if they have any compliance questions. Questions which cannot be answered by a supervisor, the DBP or other compliance personnel should be referred to the National Compliance Office.

The provisions of this Manual are not intended to create any contractual commitments or obligations on the part of the Company to any of its Representatives or employees. None of the provisions of this Manual are intended to alter any existing at-will relationships between the Company and any of its Representatives.

### B. Reporting Violations

The Company's *Policy Statement on Ethics* requires that Representatives and employees report instances of misconduct to the Company. There are several alternatives for reporting misconduct. Representatives are encouraged to discuss such issues with their immediate supervisor. If circumstances warrant further action, or if a discussion with a supervisor is not appropriate, Representatives should contact either the National Compliance Office, the Employment Law Division of the Law Department, the Chief Executive's Office or the Ethics Hot Line, a toll-free telephone number at 800-554-1503. Anyone reporting misconduct to any of these sources will be protected against retaliation.

### C. Insurance Marketplace Standards Association ("IMSA")

The Company is committed to earning and keeping the continued trust of its clients, shareholders and business associates by participating in the insurance industry's market conduct compliance programs. One example of this commitment is Equitable Life's and EOC's membership in the Insurance Marketplace Standards Association ("IMSA"). As members of IMSA, Equitable Life and EOC have agreed to abide by IMSA's Principles and Code of Ethical Market Conduct and to ensure that the concepts of the Principles and Code are reflected in compliance policies and practices. The Company's Policy Statement on Ethics formally includes IMSA's Principles and Code. Similarly, the Company's compliance program, as summarized in this Manual, reflects the concepts addressed in IMSA's Principles and Code.

## 2005 AXA ADVISORS COMPLIANCE MANUAL

Copies of the Notification Forms must be maintained in Representatives' individual compliance files.

Representatives must immediately advise AXA Advisors of the existence of any unreported securities accounts and comply with the above procedures relating to transaction reporting (unless the accounts involve securities exempt from this policy such as variable contracts, open-end mutual funds and unit investment trusts).

### 3. When Must Representatives Disclose Other Personal Securities Transactions?

Any Representative who personally wishes to purchase a security outside any B/D (such as a private placement) must provide written notice to Divisional Counsel through his or her BRM. The transaction may not take place until the Representative receives a written acknowledgment of the notice and approval from the Divisional Counsel.

## D. Private Securities Transactions/Selling Away

### 1. What Is AXA Advisors' Policy Regarding Private Securities Transactions And Selling Away?

A "private securities transaction" is any securities transaction (with a few exceptions) outside the regular course or scope of a registered representative's association with his or her broker/dealer. Private securities transactions include transactions on behalf of a client or non-client and personal purchases or sales by a Representative.

Examples of the type of securities typically involved in private securities transactions outside of a Representative's association with AXA Advisors are:

- mutual funds or variable contracts that are not offered by or through AXA Advisors or its affiliates, such as AXA Network;
- stocks not sold in the secondary market;
- private placements and shares or participation in oil well drilling and similar ventures;
- promissory notes; and
- certificates of participation.

Private securities transactions also include, but are not limited to, any involvement with new offerings of securities whether registered or not with the SEC, variable annuities, group variable annuities, coins, investments in any entity owning real estate, limited partnerships, and certificates of deposit. They may also involve certain types of loans by clients to or from the Representative, which are also prohibited. See Section on Prohibited Interest in Client Policies or Investments.

## 2005 AXA ADVISORS COMPLIANCE MANUAL

"Selling away" is a term used in the securities industry to describe those private securities transactions that are:

- outside the regular course or scope of a registered representative's association with his or her broker/dealer, *and*
- the broker/dealer has not given written approval for the transaction, *and*
- the transaction is one in which a registered representative participates with, or on behalf of, another person (who is not necessarily a client of his or her broker/dealer).

Selling away includes any manner of involvement in the securities transaction and is not limited to the sale of securities. *Further, it includes involvement without receipt of compensation.* Thus, uncompensated referrals and client introductions may be considered selling away in some circumstances. Selling away is strictly prohibited by AXA Advisors as well as by NASD Conduct Rules.

Representatives are prohibited from any involvement in private securities transactions in any capacity and at any level of involvement unless they have provided prior written notice to AXA Advisors and they have received written permission from AXA Advisors *prior to any involvement* in the transaction. If a Representative would like to be involved in a private securities transaction, either personally or on behalf of a client, the Representative must first provide detailed written notice of the proposed transaction. The notice must include a description of the Representative's proposed role and must state whether the Representative has or will receive selling compensation in connection with the transaction. Selling compensation is any compensation paid directly or indirectly in connection with, or as a result of, the purchase or sale of security. Thus, selling compensation includes, but is not limited to, finder's fees, commissions, rights to acquire securities and expense reimbursements. If AXA Advisors approves participation by the Representative, AXA Advisors is responsible for supervising the Representative's activities. Therefore, Representatives must abide by any conditions AXA Advisors may place upon the Representative's activities.

Representatives should also note that persons who the Representative solicits, refers or introduces to investments offered privately may erroneously believe that AXA Advisors has researched and recommended the investments, even if the person is not a client of AXA Advisors. This may lead to litigation and/or regulatory investigation and action. However, AXA Advisors will not permit its Representatives to offer any security without appropriate due diligence and approval by the Company. Representatives must consult with their BRM or DBP, who must then consult with Divisional Counsel, prior to engaging in any outside securities transaction for any purpose.

## 2005 AXA ADVISORS COMPLIANCE MANUAL

Violation of company policy regarding private securities transactions, including selling away, will subject Representatives to significant disciplinary action by the Company and by regulatory authorities.

### E. Initial Public Offerings

In most cases, it is a violation of NASD rules for a broker/dealer to sell an initial public offering (a newly issued security) to a registered representative. Representatives may not purchase initial public offerings. However, they *may* purchase shares of the stock when trading commences on the secondary market.

Other broker/dealers' representatives occasionally do not realize that Representatives are registered representatives and may offer IPO shares to them. Representatives must decline any such offer. If purchased, the NASD will fine and sanction both the selling broker/dealer and the registered representative who is the purchaser.

### F. Insider Trading

#### 1. What Is Insider Trading?

Insider trading is trading securities based on material non-public information ("inside information") or passing along such information to others who may act on it. Generally, information is "material" if it is likely to affect the price of a security or if it is likely to be relevant to a reasonable investor making a decision about whether to buy, hold or sell the security. Information is not considered "public" unless it has been reported in the news media, disclosed in a public filing, submitted to a regulatory body or widely disseminated outside the Company by some other means. "Inside" information may include corporate information such as sales, the number of surrenders, mortality experience, earnings, dividend changes, projections, new products, acquisitions, new stock or debt issues or other significant developments.

#### 2. What Is The Company's Insider Trading Policy?

The AXA Financial Insider Trading Policy ("Insider Trading Policy") sets forth the policy of AXA Financial with respect to trading in securities of AXA and Alliance Capital (including options and other related derivative products) while in possession of material nonpublic information about the issuer. The Insider Trading Policy applies to all directors, officers, employees and associates of AXA Financial. All Representatives must familiarize themselves with the Insider Trading Policy and comply with the rules and procedures it describes. In addition, Representatives acknowledge on their Annual Compliance Notification Form that they will comply with the terms of the Insider Trading Policy. See Sections regarding Annual Compliance Notification Form and Record Keeping. Questions regarding the Insider Trading Policy should be directed to the DBP or

## 2005 AXA ADVISORS COMPLIANCE MANUAL

4

BRM must decide whether he or she wants to retain or terminate the Representative; if the decision is to retain, the BRM must seek approval of the DP and show the recommendation is reasonably supported by the facts. The BRM must continue the plan of enhanced supervision, as described directly above, augmented by the following:

- BRM must pre-approve all the Representative's transactions;
- BRM must increase frequency of on-site visits to monthly, and
- The BRM must suspend the Representative's entitlement to receive express commissions and notify the appropriate Operations Center(s).

5

Representative is terminated subject to the DP's determination to appeal a decision to terminate to the President of Retail Distribution. If the Representative is not terminated, the enhanced supervision shall be augmented as the President of Retail Distribution, in consultation with Divisional Counsel, shall determine.

Prior to taking any action to terminate a Representative, a BRM must consult with Divisional Counsel or employment counsel in the Law Department. See Section regarding Termination Procedures.

### 4. Which Files Must Be Maintained?

The branch must maintain a chronological log of client complaints as well as an individual file for each matter. See Section regarding Record Keeping. The log and files should include copies of all complaints and any responses to the complaints. Questions regarding complaint files should be directed to the appropriate RCO.

### E. Disciplinary Action Program

The Company has a Disciplinary Action Program that is designed to provide a structure for remedial and disciplinary actions to be taken in response to violations of laws, regulations and company policies. The Disciplinary Action Program was developed with the

## 2005 AXA ADVISORS COMPLIANCE MANUAL

objective of fulfilling the Company's obligations under insurance and securities laws to adequately supervise its Representatives and to detect and prevent, insofar as possible, violations of those laws. The goal is to maintain uniform, fair and beneficial disciplinary processes for Representatives and supervisors. Review of alleged violations is conducted on two levels: local and national. Field supervisors conduct local review of alleged violations and, when appropriate, impose sanctions after consultation with Divisional Counsel. At the national level, the National Disciplinary Action Committee ("NDAC") and the Management Disciplinary Action Committee ("MDAC"), review alleged violations and, when appropriate, recommend sanctions. Sanctions include, but are not limited to, letters of caution or reprimand, fines, enhanced supervision and termination.

### 1. What Are the NDAC and The MDAC?

The NDAC is a five member committee comprised of DPs and BRMs. The NDAC reviews cases involving alleged violations of the Company's compliance policies or regulatory requirements by Representatives and DMs when branch level discipline is not appropriate. Examples of violations which should be referred to the National Compliance Office for possible referral to the NDAC include, but are not limited to, allegations of improper sales practices, unadmitted replacements, selling away, repeated violation of a compliance policy or regulatory requirement or use of unapproved sales materials.

The NDAC recommends measures to prevent any recurrence of improper conduct; the Committee may recommend sanctions ranging from a warning to termination. Representatives and DMs may not appeal recommendations for a reprimand or monetary fine. However, they may appeal, to the MDAC, recommendations for a suspension or termination.

The MDAC reviews cases involving appeals of the NDAC recommendations for suspension or termination and disciplinary matters involving DPs' or BRMs' sales practices and/or supervisory responsibilities. The MDAC is comprised of members of corporate management.

In addition to fulfilling the Company's regulatory obligations, the program, in certain cases, may effectively preempt similar or possibly more severe sanctions from being imposed by the NASD or state regulators against a Representative.

### 2. How Does the NDAC Determine Which Recommendations Are Appropriate?

When a matter is referred to the NDAC, the Representative involved should submit a written response to the allegations. The BRM supervising the Representative should also submit a written statement providing relevant information regarding the allegations. Once the NDAC receives the statements and supporting documentation, its members will weigh a number of

## 2005 AXA ADVISORS COMPLIANCE MANUAL

factors to determine an appropriate recommendation. Some of the factors the NDAC considers are as follows:

- The manner in which the Company learned about the violation (i.e., admitted or discovered via a customer complaint, regulatory inquiry or RCO examination);
- The Representative's tenure with the Company and disciplinary history;
- The intention associated with the violation (i.e., was the violation inadvertent, negligent or purposeful);
- The Representative's experience and level of training; and
- The level of supervisory knowledge, oversight and involvement in the matter.

### 3. What Disciplinary Action May Be Taken By Field Supervisors?

Effective supervision includes taking appropriate disciplinary measures to correct conduct that is inconsistent with company guidelines and/or regulatory requirements. BRMs review most alleged compliance violations by Representatives and DMs and impose discipline when appropriate. BRMs should fully investigate each alleged violation of compliance policy or procedure and should consult with Divisional Counsel prior to imposition of a sanction. Divisional Counsel will assist the BRM in determining what sanction, if any, is appropriate for the violation and is consistent with prior local and national disciplinary actions.

## F. Annual Compliance Meetings

### 1. What Are the Requirements for Attending and Documenting Annual Compliance Meetings?

All active Representatives (including retired, Senior Sales Force (SSF) and precontract Representatives) must attend an annual compliance meeting. Active Representatives are Representatives who are licensed and registered to sell insurance and/or securities. Representatives who are disabled pursuant to the Company's disability program and are not soliciting new business, and retired Representatives who are no longer NASD registered or state insurance appointed are not required to attend an annual compliance meeting. Nonsecurities registered brokers and sub-producers under a selling agreement are also exempt from the meeting requirement.

The annual compliance meeting may be held in conjunction with other branch meetings or as an independent compliance meeting. An attendance list, meeting agenda

## Annual Compliance Notification Form

Please Print.

From: [Name of Associate] Steven S. Novak

To: [Name of Manager] J. Colombo

Name of Branch: Stanford

**YES    NO\***

1. I am a securities Registered Representative of AXA Advisors (the "Company") only.
2. I am properly licensed, appointed and registered in all states where I conduct business.
3. I read, understand and am in compliance with the policies and procedures stated in the Compliance Manual ("Manual") and Investment Advisory Compliance Guide and subsequently issued compliance-related communications (collectively "Compliance Communications").
4. I read, understand and am in compliance with the policies and procedures regarding Outside Business Activities ("OBAs"). In addition, I disclosed ALL of my OBAs on my OBA Form, and, if necessary, on my NASD Form U-4. I have received Company approval to engage in the disclosed OBAs according to the policies set forth in the Manual.
5. I understand and am in compliance with my obligation to amend my NASD Form U-4 and disclose reportable events, including, but not limited to, outside business activities, changes of address, bankruptcies, felony charges, misdemeanor charges involving investments, investment-related business, fraud, false statement or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
6. I read, understand and am in compliance with the policies and procedures set forth in the Compliance Communications regarding viatical settlements.
7. I read, understand and am in compliance with the policies and procedures set forth in the Compliance Communications regarding private securities transactions (including "selling away").
8. I read, understand and am in compliance with the policies and procedures regarding "doing business as" ("DBA") activities. I reported ALL my DBA activities on my OBA Form and received approval for these activities, and to use the DBA, from my Branch Manager and the Company.
9. I read, understand and am in compliance with the policies regarding ethics, insider trading, anti-money laundering and fair competition.
10. My personal securities accounts, if any, are maintained at AXA Advisors, or reported to the Company, pursuant to the policies set forth in the Manual.
11. My financial planning and/or investment advisory activities conform to those authorized by the Company's investment advisory programs and referenced in the Compliance Communications. I am not an investment advisor representative, solicitor or investment advisor for any investment Advisor except AXA Advisors, unless disclosed to, and approved by, my Branch Manager and the Company.

|   | <u>YES</u>                          | <u>NO*</u>               |
|---|-------------------------------------|--------------------------|
| 12. All of my advertising, sales materials, stationery and business cards are approved by my Branch Manager and, if applicable, the Advertising Compliance Unit, and they are accurate and current.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 13. I understand and am in compliance with my continuing education responsibilities.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 14. I understand and am in compliance with the NASD's "cash and non-cash" compensation rules, and have not attended or conducted any outside conferences or meetings, or conducted any seminars, or contests without appropriate approval.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 15. I submit all business-related correspondence - incoming and outgoing, written and electronic - to the designated manager within one (1) week of receiving or sending it, according to the policies and procedures stated in the Compliance Communications.                        | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 16. According to the policies set forth in the Compliance Communications, I DO NOT conduct business via the internet, except as permitted.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 17. I understand and am in compliance with my responsibilities to attend an annual compliance meeting and participate in an annual compliance interview.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 18. I understand and am in compliance with my responsibility to ensure all products, services or transactions I solicit are suitable for the client. All suitability documentation and information I transmit to the Company is accurate and complete.                                | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 19. I understand and am in compliance with my responsibilities regarding client recommendations involving mutual funds that trade in share classes (e.g., "A" Shares, "B" shares, etc...), and I comply with Company procedures designed to ensure such recommendations are suitable. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 20. I read, understand and am in compliance with the policies and procedures set forth in the Compliance Communications regarding replacements.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 21. I read, understand and am in compliance with the Company's policy on privacy and provided Privacy Policy Notices to each of my new clients.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

---

I hereby certify that the above information is true.

*[Handwritten Signature]*

Associate's Signature \_\_\_\_\_ Date \_\_\_\_\_  
*Apr. 1 6<sup>th</sup> 2005*

Reviewed by: *[Handwritten Signature]* Name \_\_\_\_\_ Title (i.e., Branch Manager, BCM, etc...) \_\_\_\_\_

I hereby certify that the above information is true.

Apr. 1 6<sup>th</sup> 2005

**Associate's Signature**

Date

Reviewed by:

Name \_\_\_\_\_

Title (i.e., Branch Manager, BCM, etc...)

- Any negative responses must be explained in an attachment to this form.

## Annual Compliance Notification Form

Please Print

From: [Name of Associate] Steve S. Nickle  
To: [Name of Manager] Joseph Colombo  
Name of Branch: Stanford

YES NO\*

1. I am a securities Registered Representative of AXA Advisors (the "Company") only.
2. I am properly licensed, appointed and registered in all states where I conduct business.
3. I read, understand and am in compliance with the policies and procedures stated in the Compliance Manual ("Manual") and Investment Advisory Compliance Guide and subsequently issued compliance-related communications (collectively "Compliance Communications").
4. For field and home office supervisors and broker-dealer officers only: I read, understand and am in compliance with the policies, procedures and responsibilities pursuant to my position as described in the supervisory procedures manuals.
5. I read, understand and am in compliance with the policies and procedures regarding Outside Business Activities ("OBAs"). In addition, I disclosed ALL of my OBAs on my OBA Form, and, if necessary, on my NASD Form U-4. I have received Company approval to engage in the disclosed OBAs according to the policies set forth in the Manual.
6. I understand and am in compliance with my obligation to amend my NASD Form U-4 and disclose reportable events, including, but not limited to, outside business activities, changes of address, bankruptcies, felony charges, misdemeanor charges involving investments, investment-related business, fraud, false statement or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
7. I read, understand and am in compliance with the policies and procedures set forth in the Compliance Communications regarding viatical settlements.
8. I read, understand and am in compliance with the policies and procedures set forth in the Compliance Communications regarding private securities transactions (including "selling away").
9. I read, understand and am in compliance with the policies and procedures regarding "doing business as" ("DBA") activities. I reported ALL my DBA activities on my OBA Form and received approval for these activities, and to use the DBA, from my Branch Manager and the Company.
10. I read, understand and am in compliance with the policies regarding ethics, insider trading, anti-money laundering and fair competition.
11. My personal securities accounts, if any, are maintained at AXA Advisors, or reported to the Company, pursuant to the policies set forth in the Manual.

|  | YES                                 | NO*                                 |
|--|-------------------------------------|-------------------------------------|
| 12. My financial planning and/or investment advisory activities conform to those authorized by the Company's investment advisory programs and referenced in the Compliance Communications. I am not an investment advisor representative, solicitor or investment advisor for any investment Advisor except AXA Advisors, unless disclosed to, and approved by, my Branch Manager and the Company. | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 13. All of my advertising, sales materials, stationery and business cards are approved by my Branch Manager and, if applicable, the Advertising Compliance Unit, and they are accurate and current.  | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 14. I understand and am in compliance with my continuing education responsibilities.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 15. I understand and am in compliance with the NASD's "cash and non-cash" compensation rules, and have not attended or conducted any outside conferences or meetings, or conducted any seminars, or contests without appropriate approval.   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 16. I submit all business-related correspondence - incoming and outgoing, written and electronic - to the designated manager within one (1) week of receiving or sending it, according to the policies and procedures stated in the Compliance Communications.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 17. According to the policies set forth in the Compliance Communications, I DO NOT conduct business via the internet, except as permitted.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 18. I understand and am in compliance with my responsibilities to attend an annual compliance meeting and participate in an annual compliance interview.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 19. I understand and am in compliance with my responsibility to ensure all products, services or transactions I solicit are suitable for the client. All suitability documentation and information I transmit to the Company is accurate and complete.   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 20. I understand and am in compliance with my responsibilities regarding client recommendations involving mutual funds that trade in share classes (e.g., "A" Shares, "B" shares, etc...), and I comply with Company procedures designed to ensure such recommendations are suitable.  | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 21. I read, understand and am in compliance with the policies and procedures set forth in the Compliance Communications regarding replacements.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 22. I read, understand and am in compliance with the Company's policy on privacy and provided Privacy Policy Notices to each of my new clients.  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

I hereby certify that the above information is true.

Associate's Signature

Reviewed by:

Name

Date

Title (i.e., Branch Manager, BCM, etc...)

- Any negative responses must be explained in an attachment to this form.

June 8, 2005

## **EXHIBIT G**



AXA Advisors, LLC

Northeast Division

HAND DELIVERED

October 6, 2006

Mr. Steven Novick  
AXA Advisors, LLC  
1266 East Main Street, 6<sup>th</sup> Floor  
Stamford, CT 06902

Dear Steve,

It has been brought to my attention that you have solicited a non-AXA Advisors product to AXA Advisor clients and others. Specifically, you have sent information about a venture known as NAU, a retail-direct sports apparel entity, which currently is being funded. Further, you have invited AXA Advisors clients and others to come to a meeting to discuss how they may benefit from investing in this venture. You indicated in writing to clients and others that you were interested in raising money for this venture and personally participating in this investment.

You must immediately Cease and Desist soliciting or recommending this, or any other, non-AXA Advisors investment to anyone. Your conduct in this matter may be deemed by the Firm to be "selling away."

Registered Representatives are prohibited from any involvement in private securities transactions in any capacity and at any level of involvement unless the Registered Representative has provided prior written notice to AXA Advisors and has received written permission from AXA Advisors prior to any involvement in the transaction. AXA Advisors has no record of written notice of this investment nor was any approval given for you to personally invest in this venture or to solicit investment by others.

AXA ADVISORS

1266 East Main Street, Stamford, CT 06902 Tel: (203) 348-1000 Fax: (203) 326-7398

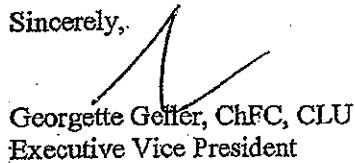
[www\\_AXAonline.com](http://www_AXAonline.com)

Mr. Steven Novick  
Page Two  
October 6, 2006

As a result of this conduct, please be advised that all of your new business must be reviewed prior to submission for processing by me or Branch Compliance Manager William DeMatteo. In addition, all correspondence, including email, must be reviewed by myself or William prior to being sent. These procedures will be in place at least until such time as this matter is resolved.

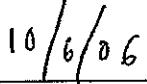
Please sign the attached acknowledgement to indicate that you have received this letter, and return it to me today.

Sincerely,

  
Georgette Geller, ChFC, CLU  
Executive Vice President

I acknowledge receipt of this letter. In addition, I understand and agree to abide by the terms set forth in the letter.

  
Steven Novick

  
Date

cc: Anthony Sages, Divisional President  
Phil Gullo, Divisional Director of Business Practices  
Patricia A. Boylan, Divisional Counsel  
William DeMatteo, Branch Controls Manger  
Michael Brzozowski, Regional Compliance Officer

## **EXHIBIT H**

08/03/2007 11:08 PAX 91732 596 3582

NASD

0002/003



August 03, 2007

Via First Class Mail  
Mr. Steven Scott Novick  
87 North Wilton Road  
New Canaan, Connecticut 06840

Re: Letter of Caution  
Examination 20060056990

Dear Mr. Novick:

We have completed our investigation of the above-referenced matter. Based upon our review of the information and documentation provided, this Letter of Caution is being issued concerning your violations of NASD Conduct Rule 2110.

Conduct Rule 2110 states that:

"A member, in the conduct of his/her business, shall observe high standards of commercial honor and the just and equitable principals of trade."

Based upon our review of your conduct, you attempted to solicit a number of prospective and/or existing customers between September 27, 2006 and October 4, 2006 to participate in transactions to purchase NAU Incorporated, Series C Preferred Stock.

Your involvement with the attempted solicitation of a non-firm approved security is violative of your firm's written supervisory procedures, Chapter 3, Section D. Violation of your firm's written supervisory procedures is also a violation of NASD Conduct Rule 2110.

Consequently, the staff is issuing you this Letter of Caution.

For your information, a Letter of Caution is not included in the Central Registration Depository nor must it be reported on Form U-4. However, since it is a cautionary action, in accordance with long-standing FINRA practice, it will be taken into consideration in determining any future matter should violations occur.

Investor protection. Market integrity.

581 Main Street t 732.596.2000  
Suite 710 f 732.596.2001  
Woodbridge, NJ  
07095-1164 [www.finra.org](http://www.finra.org)

CONFIDENTIAL

NCVICK007559

08/03/2007 11:08 NAJ 91732 596 3562

NASD

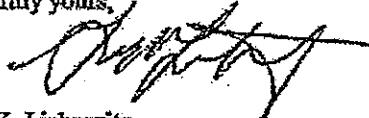
D003/063

20060066990, Steven Scott Novick  
August 02, 2007, Page 2

Please respond to this letter no later than August 14, 2007, outlining the steps you will take or have taken to avoid a future recurrence of the foregoing.

If you have any questions regarding this matter, please feel free to contact Robert McCarthy, Staff Supervisor, at (732) 596-2033.

Very truly yours,



Gary K. Liebowitz  
Senior Vice President / Regional Director

cc: Robert McCarthy, Staff Supervisor  
Robert Herskovits, Esq. (via facsimile only 212.809.5449)  
Joseph Tuorto, CCO, Limco/ Private Ledger (via facsimile only 858.554.0470)

CONFIDENTIAL

NOVICK007560

Aug 21 2007 9:03AM N C FINANCIAL GROUP

203 594 1313

p.1

STEVEN S. NOVICK  
c/o Robert L. Herskovits, Esq.  
Gusra, Kaplan, Bruno & Nusbaum PLLC  
120 Wall Street  
New York, NY 10005

August 20, 2007

BY FACSIMILE AND MAIL

Gary K. Liebowitz  
Senior Vice President / Regional Director  
Financial Industry Regulatory Authority  
581 Main Street, Suite 710  
Woodbridge, NJ 07095-1164

Re: Examination 20060066990

Dear Mr. Liebowitz:

I write as requested and in response to your letter dated August 3, 2007. Although I respectfully disagree with your "attempted solicitation" characterization, I will re-review my employer's applicable written supervisory procedures. I will further consult with a compliance officer or counsel should the meaning of any supervisory procedure be unclear to me.

Yours truly,

Steven S. Novick

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NOVICK007561